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DISTRICT IV

November 5, 2026

To:

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Circuit Court Judge
Electronic Notice

Elizabeth Storlie
Register in Probate
Jackson County Courthouse
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Emily E. Hynek
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Steven Zaleski
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2026AP2045 In re the termination of parental rights to N.K.M.F., a person under the age of 18: Jackson County v. A.J.F. (L.C. # 2025TP20)

Before Ziegler, J.[1]

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

A.J.F. appeals an order terminating his parental rights to his daughter. He argues that the circuit court erred during the grounds phase when it granted partial summary judgment to Jackson County on the ground of abandonment. Having reviewed the record and briefs, I conclude that this case is appropriate for summary disposition under WIS. STAT. RULE 809.21(1). Because the summary judgment submissions present genuine issues of material fact, I reverse the

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

order terminating A.J.F.'s parental rights and remand for a factfinding hearing on grounds and, if grounds are found, a new dispositional hearing.

The County filed a petition to terminate A.J.F.'s parental rights to his daughter in September 2025, alleging the grounds of abandonment under WIS. STAT. § 48.415(1)(a)2., continuing need of protection or services under § 48.415(2), and failure to assume parental responsibility under § 48.415(6). Subsequently, the County filed a motion for partial summary judgment only on the abandonment ground. The abandonment allegation was that the child had been placed or continued in a placement outside A.J.F.'s home by a court order containing the notice required by WIS. STAT. § 48.356(2) and that A.J.F. had failed to visit or communicate with the child for three months or longer.

The County's motion was accompanied by a supporting affidavit from the supervisor for its child protection unit that attached a January 7, 2025 written order that placed the child outside A.J.F.'s home and contained the required notice. The affidavit asserted that A.J.F. had no contact with his daughter during the time period between that order and July 10, 2025, when A.J.F. had a supervised visit with her.

A.J.F. filed a response and affidavit opposing the County's motion. The response asserted that genuine issues of material fact existed regarding both whether A.J.F. had visited or communicated with his daughter during the alleged time period and, if there was no contact, whether A.J.F. had good cause for the failure to communicate or visit with his daughter. Good

cause is a statutory defense to the ground of abandonment. WIS. STAT. § 48.415(1)(c)1.-2.[2] A.J.F.'s affidavit asserted that his daughter was placed with his grandmother from August 2024 until May 1, 2025, when the County "requested to move her from my grandmother's home after allegations that I was having contact with [my daughter] at her home."

The County filed a reply to A.J.F.'s response with an affidavit from the same supervisor whose affidavit had supported the summary judgment motion. Regarding the child's previous placement with A.J.F.'s grandmother, the affidavit asserted that the grandmother "admitted that [A.J.F.] was living on the property and coming in to her home." The affidavit further asserted that "[t]his [admission] resulted in [the child] being removed from [the grandmother]'s care and [A.J.F.] being arrested for violating rules of probation."

At the hearing on summary judgment, A.J.F. argued that there were genuine disputes of material fact as to both whether any three-month period had passed without him visiting or communicating with his daughter, and whether, if such a period had passed, he had good cause for the failure to visit or communicate. The circuit court determined that there was "nothing in the court record which would identify any specific contact between [the child] and [A.J.F.], or communication specifically between January 7, 2025 and July 10 of 2025." It described A.J.F.'s affidavit as containing "general denials essentially without any specificity that the Court can rely on." The court granted partial summary judgment to the County without addressing whether

[2] The good-cause defense under WIS. STAT. § 48.415(1)(c) requires, pertinent here, that the parent prove by a preponderance of the evidence not only good cause for failing to visit and communicate with the child throughout the time period of the alleged abandonment, but also that the parent either communicated about the child with the person or persons having physical custody or with the agency responsible for the care of the child, or had good cause for any failure to communicate about the child with this person or persons. § 48.415(1)(c)1.-3.

A.J.F. had submitted sufficient evidence to establish that he had good cause for his failure to visit or communicate with his daughter. After a dispositional hearing, the court entered an order terminating A.J.F.'s parental rights.[3] A.J.F. appeals.

"'Summary judgment is appropriate when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law.'" ***Talley v. Mustafa***, 2018 WI 47, ¶12, 381 Wis. 2d 393, 911 N.W.2d 55 (quoted source omitted); *see* WIS. STAT. § 802.08(2). This court reviews a grant of summary judgment de novo using the same methodology as the circuit court. ***Johnson v. Washburn County***, 2010 WI App 50, ¶7, 324 Wis. 2d 366, 781 N.W.2d 706. In determining whether any genuine disputes of material fact exist, courts draw all reasonable inferences from the evidence in the light most favorable to the non-moving party. ***Grams v. Boss***, 97 Wis. 2d 332, 339, 294 N.W.2d 473 (1980). "Whether an inference is reasonable and whether more than one reasonable inference may be drawn are questions of law." ***Burbank Grease Servs., LLC v. Sokolowski***, 2005 WI App 28, ¶10, 278 Wis. 2d 698, 693 N.W.2d 89, *rev'd in part on other grounds*, 294 Wis. 2d 274, 717 N.W.2d 781. "Doubts as to the existence of a genuine issue of material fact should be resolved against the party moving for summary judgment…." ***Pum v. Wisconsin Physicians Serv. Ins. Corp.***, 2007 WI App 10, ¶6, 298 Wis. 2d 497, 727 N.W.2d 346.

On appeal, A.J.F. renews his argument that genuine disputes of material fact existed regarding both whether he failed to visit or communicate with his daughter during the alleged abandonment time period and whether he had good cause for any such failure. Because I

[3] The child's mother's parental rights were also terminated in the same proceedings. The mother has not appealed.

conclude that there is a genuine issue of material fact regarding whether A.J.F. failed to visit or communicate with his daughter for three months or longer, I need not decide whether the same is true regarding the alleged good cause. *See* ***Lamar Cent. Outdoor, LLC v. DHA***, 2019 WI 109, ¶41, 389 Wis. 2d 486, 936 N.W.2d 573 ("'An appellate court need not address every issue raised by the parties when one issue is dispositive.'" (quoted source omitted)).

As previously noted, the County sought partial summary judgment on the ground that A.J.F. abandoned his daughter which, in this circumstance, would require that A.J.F. failed to visit or communicate with his daughter for three months or longer. *See* WIS. STAT. § 48.415(1)(a)2. To fulfill the statutory abandonment ground, the period of non-visitation and non-communication had to occur during a time when his daughter was placed or continued in a placement outside of A.J.F.'s home by a court order accompanied by the required warnings, meaning that the earliest date that could be counted was January 7, 2025. The County asserted in its initial affidavit that A.J.F. had no contact with his daughter from before that date until July 10, 2025. Therefore, the issue I need to address is if there is a genuine dispute as to whether A.J.F. went any three-month period during that approximately six months without visiting or communicating with his daughter.

I conclude that the parties' affidavits demonstrate that such a dispute exists. A.J.F.'s affidavit asserts that his daughter was placed with his grandmother from August 2024 until May 1, 2025, when the County "requested to move her" from that residence "after allegations that [A.J.F.] was having contact with [his daughter] at her home." The County's responsive affidavit asserts that A.J.F.'s grandmother "admitted that [A.J.F.] was living on the property and coming in to her home" which led to the child being removed from the grandmother's home and A.J.F. being arrested.

These sworn statements taken together support a reasonable inference that A.J.F. was entering the home while his daughter was present and either visiting or communicating with her. The affidavits do not state when A.J.F. began living on the property and entering the home. But, a reasonable inference could be drawn that it began some time prior to May 1, 2025, and there is nothing in the summary judgment submissions that would prevent a reasonable factfinder from concluding that A.J.F. had visited or communicated with his daughter during a time period such that no three-month period passed without visitation or communication. On summary judgment, "[d]oubts as to the existence of a genuine issue of material fact should be resolved against the party moving for summary judgment, and the inferences to be drawn from the underlying facts should be viewed in the light most favorable to the party opposing the motion." ***Pum***, 298 Wis. 2d 497, ¶6.

It is true, as the County argues, that nothing in the summary judgment submissions shows "that the contact *actually* occurred." But it is "well established that circumstantial evidence is available to meet the burden of proof even on summary judgment." ***Beuttler v. Marquardt Mgmt. Servs., Inc.***, 2022 WI App 33, ¶28, 404 Wis. 2d 116, 978 N.W.2d 237. Circumstantial evidence is "'evidence from which a [factfinder] may logically find other facts according to common knowledge and experience.'" ***Id.*** (quoted source omitted). Here, the averred facts surrounding A.J.F.'s and his daughter's simultaneous presence on A.J.F.'s grandmother's property, the "admissions" by the grandmother that A.J.F. was entering the home, and the "allegations" that A.J.F. was having contact with his daughter could lead a reasonable factfinder to logically find that the two had communicated or visited during a time period which would break up any three-month abandonment time period. I therefore reverse the circuit court's grant of partial summary judgment to the County.

Having concluded that partial summary judgment should not have been granted in the grounds phase, I reverse the order terminating A.J.F.'s parental rights to his daughter. I remand for a factfinding hearing on grounds under WIS. STAT. § 48.424, and if grounds are found to exist, for a new dispositional hearing under WIS. STAT. § 48.427.

IT IS ORDERED that the order is summarily reversed under WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals